

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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LOUIS J. THIBODEAUX,

Petitioner,

v.

BRIAN BELLEQUE,

Respondent.

No. CV 07-985-HU

OPINION & ORDER

MOSMAN, J.,

On October 21, 2009, Magistrate Judge Hubel issued Findings and Recommendation ("F&R") (#65) in the above-captioned case recommending that I DENY petitioner's Amended Petition for Writ of Habeas Corpus (#42) and DISMISS this case with prejudice. Petitioner filed objections (#67) to the F&R.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate

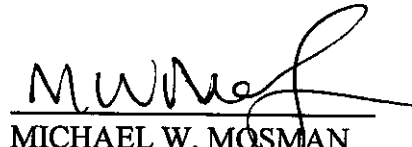
judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Petitioner argues in his objections that because he was not appointed counsel during his post-conviction proceedings as required by state law, the state deprived him of his liberty without due process of law in violation of the U.S. Constitution. As Judge Hubel explained in his F&R, however, the Ninth Circuit has explicitly rejected this argument in *Smith v. Idaho*, 392 F.3d 350, 357 (9th Cir. 2004). I therefore find that petitioner's objections to the F&R are without merit.

Upon review, I agree with Judge Hubel's recommendation, and I ADOPT the F&R (#65) as my own opinion.

IT IS SO ORDERED.

DATED this 23 day of November, 2009.


MICHAEL W. MOSMAN
United States District Court